**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Chapter VIII, Rule 32 (2)(b)

Description of the Case

Criminal Jail Appeal No. 246 of 2002

Date of decision :-03.03.2006

~~A.F.R. (Approved for Reporting)~~

Not Approved for reporting

Initial of Judge.

Date

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

**Criminal Jail Appeal No. 246 of 2002**

Rajvir Singh
84 Hill Street Meerut
Police Station – Sadar Bazar,
District – Meerut ….Appellant

**Versus**

State of Uttaranchal …Respondent

Sri A.S. Gill, learned counsel for the appellant.
Sri A. Rab, Addl. G.A. and Sri Chaudhary Sudhir Kumar & Sri Rajeev Mohan- A.G.A. for the State

**Hon'ble J.C.S. Rawat, J.**

The present appeal has been directed against the judgment and order dated 11.09.2002 passed by the learned Addl. Sessions Judge, Nainital in Sessions Trial No. 47 of 1996 by which the learned Sessions Judge has convicted and sentenced the accused-appellant u/s 20 of the N.D.P.S. Act for a period of 10 years R.I. and a fine of Rs. 1,00,000/- and in default of payment of fine, the appellant shall further undergo two years additional imprisonment.

Brief facts for the disposal of this appeal are that the police party was on patrolling duty on 06.10.1195 at about 8:50 p.m. When the patrolling party reached near the village Bichai, the patrolling party saw a person sitting on the *Pulia.* When the appellant saw the police party in jipsy, he started running away towards the forest. The police immediately intercepted and apprehended the accused-appellant. On being asked as to why he was running from the spot, the appellant stated that he had charas. Thereafter, he was informed about his right being searched before the Magistrate or a Gazetted Officer. The accused-appellant stated that he did not want to be searched before the Magistrate or a Gazetted Officer and he stated that his search may be taken by them.

Thereafter, the search of the accused-appellant was conducted in accordance with the law and 2 kgs charas was recovered from his bag. The appellant could not show any licence for keeping the said

contraband. Thereafter, the said contraband was sealed at the spot and the accused was taken to the police station and report was lodged. Thereafter the investigation was conducted and the chargesheet was submitted. The accused was charged u/s 15/20 of the N.D.P.S. Act.

The accused-appellant denied the charges levelled against him and claimed trial.

The prosecution is support of its case adduced the evidence of Shri Trilok Singh –PW1, Devender Singh-PW2, SO, Mahila Thana, Almora. PW1 and PW2 have narrated the entire incident as indicated in para 2 of my judgment. Shri Ganga Singh-PW3 is the investigating officer who has submitted the chargesheet in this case.

In the statement recorded u/s 313 Cr.P.C. the appellant denied the prosecution case and stated that he has been falsely implicated in this case. He had stated that he had to take money from the owner of the saw mill and there was scuffle with the son of the owner of the saw mill. Thereafter he was taken to the police station where he was kept in the police station for three days and thereafter he was challenged. The defence has not adduced any evidence in support of his case.

The learned Sessions Judge after appraisal of the evidence on record found the appellant guilty u/s 20 of the N.D.P.S. Act and convicted and sentenced the appellant as mentioned above.

Feeling aggrieved by the said order the present appeal has been preferred.

I have heard learned counsel for the parties and perused the record.

Perusal of the record reveals that there is evidence of Sri Trilok Singh who is the constable and Devendra Singh-PW2, S.O. Mahila Thana, Almora who were present in the patrolling party and they have arrested the accused at the spot and the evidence is totally cogent and credible. I am completely in agreement with the findings recorded by the trial court. Learned counsel for the defence did not challenge the findings recorded by the trial court. The learned

counsel for the defence did not challenge the propriety of the findings recorded by the trial court. Learned counsel for the defence only contended that the accused had been suffering the sentence awarded by the court in jail since 06.10.1995. The accused has already served the sentence of 10 years which has been awarded by the trial court. Learned counsel for the appellant further contended that the accused-appellant had been convicted and sentenced to pay a fine of Rs. 1 lac in addition to imprisonment of ten year in default of payment of fine he had further to serve period of two years additional imprisonment. Learned counsel for the appellant further contended that the appellant is not able to pay the said fine and he had been serving the sentence in default of payment of fine. He has further contended that a lenient view may be taken and in default of payment of fine, the appellant may be given a sentence of six months only as he has already served six months on this count also. Learned Addl.G.A. has also conceded that the appellant is in jail since 06.10.1995 and he had served the sentence of 10 years and he is serving the sentence since 06.10.1995. It is provided u/s 65 of I.P.C. as under :-

***"Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable. .-****The term for which the Court directs the offenders to be imprisoned in default of fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine."*

The perusal of Section 65 clearly emphasis that the minimum sentence has not been prescribed in case of default of payment of fine, it has been provided that in default of the payment of fine, it should not exceed one-forth of the term of imprisonment which is the maximum fixed for the offence. Thus the court has got the jurisdiction to impose the limit less than one-forth of the imprisonment. In the instant case, the accused has already served the substantive sentence of ten year. It would be just and proper, if the imprisonment of two years in default of payment of fine may be

reduced for one year. The conviction is maintained and the sentence is modified to the extent that the appellant will undergo imprisonment of minimum sentence of 10 years R.I. and a fine of Rs. 1 lacs and in default of payment of fine, the appellant has to further undergo a sentence of one year. If the appellant had served the sentence as provided in this order, he will be entitled to get the set off as provided u/s 235 I.P.C.

In view of the above observation, the conviction is maintained and the sentence is modified to the extent as indicated above.

The appeal is disposed of accordingly.

**(J.C.S. RAWAT, J.)**

30th March, 2006
Shiv